



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
(800) 451-6027
www.idem.IN.gov

August 3, 2006

TO: Water Pollution Control Board

FROM: Nancy King
Office of Legal Counsel

SUBJECT: Recall and Readoption of LSA Document #05-322

Background

This board final adopted amendments to compliance dates within the CAFO rules on May 10, 2006. At that time, EPA Region 5 sent a letter objecting to Indiana's amended dates. After many discussions with EPA, it was determined that EPA could not conditionally approve Indiana's amended compliance dates because existing federal regulations provide different, earlier compliance dates. When the rules the board adopted in May become effective, Indiana's rules will be less stringent than current federal regulations. Therefore, to eliminate EPA's objection to Indiana's amended rules, IDEM has recalled the rule under IC 4-22-2-40 and is asking the board to readopt the rule with compliance dates that comport with current federal regulations.

Suggested Amendments

The following date changes are requested:

1. 327 IAC 5-4-3(i)(2), the date by which newly defined CAFOs must apply for a NPDES permit, amend February 13, 2006 to July 31, 2007;
2. 327 IAC 5-4-3(i)(3)(D), the date by which certain exempt CAFOs must apply for a permit, amend April 13, 2006 to July 31, 2007;
3. 327 IAC 5-4-3(i)(5)(B), the date by which certain exempt CAFOs must apply for a permit, amend April 13, 2006 to July 31, 2007;
4. 327 IAC 15-15-11(a), the date by which a Soil Conservation Practice Plan must be implemented, amend December 31, 2006 to July 31, 2007;
5. 327 IAC 15-15-11(a)(2), the date by which a Soil Conservation Practice Plan must be written, amend December 31, 2005 to July 31, 2007;
6. 327 IAC 15-15-11(a)(3), the implementation date of the Soil Conservation Practice Plan, amend December 31, 2006 to July 31, 2007;
7. 327 IAC 15-15-11(b), the date that certain CAFOs become subject to the rule and must comport with the Soil Conservation Practice Plan requirements upon coverage, amend December 31, 2006 to July 31, 2007; and

8. 327 IAC 15-15-12(d), the date by which existing operations must conform with NRCS 590 nutrient management requirements, amend December 31, 2006 to July 31, 2007.

Board Action

Under IC 4-22-2-40, the board may readopt a rule after an agency recalls it. The board may adopt either the identical rule or a revised rule. (IC 4-22-2-40(c)). The rule will then be submitted to the Attorney General for approval, forwarded to the Governor for signature, and submitted to Legislative Services for publication as a final rule. No public hearing is required prior to readoption of a recalled rule.

The agency requests that the board adopt the above-referenced amendments to the rule, and then readopt the rule as amended. The version of the rule that the board will be amending at readoption is the version that was final adopted at the May 10, 2006 board meeting. I will be happy to answer any questions you have regarding the readoption process or the rule itself at the August 9 board meeting.